JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LYNN HERNANDEZ, et al., **Plaintiffs,** **v.** **BAXTER HEALTHCARE CORPORATION, et al.,** **Defendants.**	**Case No.: SACV 15-01075-CJC(DFMx)** **ORDER GRANTING DEFENDANTS' MOTION TO TRANSFER VENUE**

I. INTRODUCTION & BACKGROUND

On June 2, 2015, Plaintiffs Lynn Hernandez, Melanie Lira, Gloria Jiminez, and Angela Hernandez-Miranda (collectively, "Plaintiffs") brought this action in Orange County Superior Court against Defendants Baxter Healthcare Corporation; Cardinal

Health, Inc.; Cardinal Health 100, Inc.; Cardinal Health 200, LLC; Cardinal Health 201, Inc.; Cardinal Health 411, LLC (collectively, "Defendants"); and Home Dialysis Therapies of San Diego ("HDT"), who has been dismissed from this case. (Dkt. No. 1 ["Notice of Removal"]; Exh. A. ["Compl."].) The Complaint alleged product liability claims against the Defendants arising from the illness and death of Plaintiffs' decedent, Mario Hernandez ("Decedent"). Plaintiffs contend that Mr. Hernandez's death is attributable either to a defect in a Baxter product known as a MiniCap.

Defendants removed this action to this Court on July 7. On August 25, this Court denied Plaintiffs' motion for remand and granted Defendants' motion to dismiss HDT from the action. Currently before the Court is Defendants' motion to transfer venue to the Southern District of California (Dkt. No. 17). For the following reasons, the Court GRANTS Defendants' motion to transfer venue.[1]

II. ANALYSIS

A district court has discretion to transfer a civil action "for the convenience of parties and witnesses, in the interest of justice" to "any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Under section 1404(a), two findings are required for proper transfer: (1) the transferee district court is one where the action might have been brought, and (2) the convenience of the parties and witnesses and the interest of justice favor transfer. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985). A court may consider multiple factors in determining whether the interests of justice favor transfer, including: "(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for September 21, 2015 at 1:30 p.m. is hereby vacated and off calendar.

choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof," in addition to the relevant public policy of the forum state. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). The moving party bears the burden of demonstrating that transfer is appropriate. *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001). District courts have broad discretion to adjudicate motions for transfer according to an individualized, case-by-case consideration, *Jones*, 211 F.3d at 498, and must undertake a "flexible and individualized analysis" of relevant factors, *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988).

Here, the parties do not dispute that this action could have been brought in the Southern District of California, since the parties are diverse and Defendants concede that they are subject to personal jurisdiction in the Southern District of California. (Dkt. No. 17 at 4.) Additionally, venue is proper there because "a substantial part of the events or omissions" giving rise to Plaintiffs' claims against Defendants occurred in the Southern District. *See* 28 U.S.C. § 1391(b)(2). Decedent received home dialysis treatment there; he used the MiniCap there; and he ultimately contracted an infection and died there. Accordingly, the first requirement of §1404(a) is satisfied.

The interests of justice also favor transfer. The first *Jones* factor—where the "relevant agreements were negotiated and executed"—favors transfer because, although no agreements are at issue here, all of the relevant events to Plaintiffs' claims occurred in the Southern District of California. Decedent received home dialysis treatment there, he used the allegedly defective MiniCap there, he was treated for his ensuing infection there, and he passed away there. The second *Jones* factor, which looks to whether one venue is more familiar with the governing state law than another, neither weighs for or against transfer, since the Central and Southern Districts are equally familiar with California state law. The third *Jones* factor—the plaintiff's choice of forum—would normally cut strongly against transfer. However, when "a plaintiff does not reside in the [selected] forum, the Court may afford plaintiff's choice considerably less weight." *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d. 1151, 1156 (N.D. Cal. 2009); *see also In re Apple*, 602 F.3d 909, 913 (8th Cir. 2010) ("[The] practice of according deference [to a plaintiff's choice of forum], however, is based on the assumption that the plaintiff's choice will be a convenient one."). Here, there is apparently no good reason for Plaintiffs' filing in the Central District aside from the fact that their counsel is located here. But it is well-settled that the location of counsel is "irrelevant and improper for consideration in determining the question of transfer of venue." *In re Horseshoe Ent.*, 337 F.3d 429, 434 (5th Cir. 2003); *see also Vu*, 602 F. Supp. 2d. at 1157 (granting motion to transfer when the only connection between the plaintiffs and the original venue was the location of plaintiffs' counsel). This analysis also informs the fourth and fifth *Jones* factors—the "respective parties' contacts with the forum," and "the contacts relating to the plaintiff's cause of action in the chosen forum." *Jones*, 211 F.3d at 498. Simply put, there are no such contacts, or at least none that are relevant to this action.

The sixth and seventh *Jones* factors weigh neither for nor against transfer, as the parties have not provided the Court with any reason to believe that litigation will be more or less expensive in the Southern District or that the availability of compulsory process will be implicated. And finally, the eighth *Jones* factor—the ease of access to sources of proof—militates for transfer. No evidence which is relevant to this action, as far as the Court can tell, is located in the Central District of California. By contrast, considerable evidence as to Decedent's illness and death, as well as the MiniCap he used, is located in the Southern District of California.

Plaintiffs object that Defendants have not specifically identified particular witnesses by name, their locations, and the content of their potential testimony. It is true that some courts ruling on discretionary motions to transfer have required "affidavits or declarations" from the party seeking transfer which "identify key witnesses and [give] a generalized statement of their anticipated testimony." *E. & J. Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465, 466–67 (E.D. Cal. 1994). Here, however, it is plain from the pleadings that many witnesses and a great deal of evidence is located in the Southern District of California. And there is no connection at all between this action, or any of the events which precipitated it, and the Central District of California. "A choice of forum supported only by the fact that it was chosen . . . cannot prevail under § 1404(a)" against Defendants' showing here that litigation will be more convenient in the Southern District. *Pacific Car & Foundry Co. v. Pence*, 403 F.2d 949, 955 (9th Cir. 1968). Accordingly, Defendants have met their burden of demonstrating that the interest of justice will be served by discretionary transfer. Defendants' motion to transfer venue to the Southern District of California is GRANTED.

III. CONCLUSION

For the foregoing reasons, Defendants' motion to transfer venue is GRANTED.

DATED: September 10, 2015

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE